

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM J. GRADFORD.

Plaintiff,

V.

TIEXIERA; MCCARTHY,

Defendants.

Case No. 1:19-cv-01783-NONE-SKO (PC)

**ORDER DENYING MOTION TO
VACATE VOLUNTARY DISMISSAL
AND SETTLEMENT AGREEMENT IN
CASE NO. 1:17-CV-00201-DAD-GSA AND
CONSOLIDATE ACTION WITH CASE
NO. 1:17-CV-01248-DAD-GSA**

(Doc. 12)

Before the Court is a document titled, “Plaintiff’s request [to] reset settlement conference, also all cases moved to related case 1:17-cv-01248-DAD-GSA.” (Doc. 12.) In the document, Plaintiff states, “[t]his is the exact same case that was filed with the courts in ... 2017 case number ... 1:17-cv-00201-DAD-GSA.” (*Id.*) In the latter case, Plaintiff and Defendants reached a settlement and filed a joint stipulation for dismissal on May 7, 2019. *See Gradford v. Tiexiera, et al.*, No. 1:17-cv-00201-DAD-GSA (Doc. 87). Plaintiff seeks to “void” the settlement agreement in that case, “reset” a settlement conference, and join the case and the present action with Case No. 1:17-cv-01248-DAD-GSA. (*See* Doc. 12.) The Court construes Plaintiff’s filing as a motion to (1) vacate the settlement agreement and voluntary dismissal in *Gradford v. Tiexiera, et al.*, No. 1:17-cv-00201-DAD-GSA, pursuant to Federal Rule of Civil Procedure 60, and (2) consolidate this action with *Gradford v. Flores, et al.*, No. 1:17-cv-01248-DAD-GSA, currently pending before the court, pursuant to Rule 42.

1 The Court DENIES Plaintiff's motion (Doc. 12). If Plaintiff seeks to vacate the voluntary
2 dismissal in Case No. 1:17-cv-00201-DAD-GSA, he must file a motion seeking relief in that case,
3 not initiate a new, identical case. In addition, the Court has issued findings and recommendations
4 to dismiss this action because it is barred by the statute of limitations. (Doc. 11.) The Court will
5 not consolidate this case with a pending case when it should instead be dismissed as time-barred
6 and duplicative. *See Cato v. United States*, 70 F.3d 1103, 1105 (9th Cir. 1995) (court may dismiss
7 “under § 1915(d) a complaint ‘that merely repeats pending or previously litigated claims’”)
8 (citations omitted).

IT IS SO ORDERED.

11 Dated: **March 9, 2020**

[Signature] Sheila K. Oberto

UNITED STATES MAGISTRATE JUDGE